

SURFACE TRANSPORTATION BOARD

DECISION

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 1064X

FULTON COUNTY, LLC—ABANDONMENT EXEMPTION—IN FULTON COUNTY, IND.

Decided: February 6, 2013

On July 2, 2010, Fulton County, LLC (FC) filed a notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon its line of railroad between milepost 96.9, a point 200 feet north of East 18th Street, and milepost 95.6, the end of the track at the northwest property line of Wabash Road, a distance of 1.3 miles, in Rochester, Fulton County, Ind. (the line). Notice of the exemption was served and published in the Federal Register on July 22, 2010 (75 Fed. Reg. 42,815-16). By Decision and Notice of Interim Trail Use (NITU) or Abandonment, served on August 20, 2010, the Board reopened the proceeding and modified the notice exempting the abandonment of the line to permit Nickel Plate Trail, Inc., under the National Trails System Act, 16 U.S.C. § 1247(d) (Trails Act), to negotiate with FC for trail use of the line for a 180-day period until February 16, 2011.¹

On January 3, 2011, The Northern Indiana Community Foundation (Community Foundation) also filed a request for the issuance of a NITU for the line under the Trails Act and 49 C.F.R. § 1152.29 to negotiate with FC for acquiring the right-of-way for use as a trail. By Decision and Notice of Interim Trail Use served on February 7, 2011, the proceeding was reopened for a period of 180 days and Community Foundation was authorized to negotiate with FC for trail use of the subject line and notice until August 8, 2011. Community Foundation and FC reached a trail use agreement thereafter.

On January 29, 2013, Community Foundation and the City of Rochester Common Council on behalf of the City of Rochester (City of Rochester) filed a joint petition pursuant to 49 C.F.R. § 1152.29(f) to reopen the above-captioned abandonment exemption proceeding, to vacate the existing NITU, and to issue an appropriate replacement NITU to the new trail user, City of Rochester. FC has no objection to the substitution of City of Rochester as the trail user, provided that City of Rochester assumes the responsibilities set forth in 16 U.S.C. § 1247(d) and 49 C.F.R. § 1152.29. Petitioners have submitted a copy of the extant NITU and a statement by Rochester of its willingness to assume financial responsibility for interim trail use and rail

¹ The decision and notice also made the exemption subject to a public use condition under 49 U.S.C. § 10905, to permit public use negotiations for the line for a period of 180 days until February 17, 2011.

banking pursuant to 16 U.S.C. § 1247(d) and 49 C.F.R. § 1152.29. City of Rochester has acknowledged that use of the right-of-way is subject to possible future reconstruction and reactivation of the right-of-way for rail service. Petitioners' submission meets the requirements of 49 C.F.R. § 1152.29(f). Accordingly, petitioners' request will be granted and a replacement NITU will be issued.

The decision will not significantly affect either the quality of human environment or the conservation of energy resources,

It is ordered:

1. This proceeding is reopened.
2. The NITU served on February 7, 2011, is vacated.
3. A replacement NITU applicable to City of Rochester as interim trail user is issued, effective on the service date of this decision and notice.
4. The new trail user is required to assume, for the term of the agreement, full responsibility for management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against, the right-of-way.
5. Interim trail use/rail banking is subject to the future restoration of rail service and to the new user's continuing to meet the financial obligations for the right-of-way.
6. If the new trail user intends to terminate trail use, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.
7. This decision is effective on its service date.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.